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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,805	08/30/2001	Serge Restle	05725.0927	6749
22852	7590	07/22/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			CRIAES, THEODORE J	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/890,805

Applicant(s)

RESTLE ET AL.

Examiner

Theodore J. Criares

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-75 is/are pending in the application.
- 4a) Of the above claim(s) 625-33, 38-48, 50-73 and 76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24, 34-37, 49, 74 and 75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **CLAIMS 24-76 ARE PRESENTED FOR EXAMINATION**

To clarify the record only claims 24, 34-37, 49, 74 and 75 have been examined.

The examination relates to a composition comprising (A) a cosmetically acceptable aqueous medium, (B) a washing base comprising an anionic surfactant and an amphoteric surfactant; and (C) a carboxylic acid ester (formed with a monoalcohol and a monocarboxylic acid) wherein the ratio of the anionic surfactant :amphoteric surfactant by weight being less than or equal to 3:1. The composition is also devoid of a cationic surfactant.

Claims 25-33, 38-48, 50-73 and 76 have been withdrawn from consideration.

Applicants' Terminal disclaimer has been reviewed and accepted by the Patent Office.

Claims 50-73 were not rejected in the previous Office Action. This is deemed a typographical error.

Applicant's arguments filed March 8, 2004 have been fully considered but they are not persuasive. Applicants argue that the specific ammonium laureth sulfate and sodium lauryl sarcosineate are not anionic and amphoteric surfactants, respectively. However, the reference teaches as applicants acknowledge that sodium lauryl sarcosinate is an anionic surfactant. See Young at column 4, line 28. Applicants are correct in this observation. However, Young et al, teach in Example I at column 14, lines 10-34 the anionic surfactant ammonium laureth(3) and the amphoteric surfactant cocamidopropyl betaine in a ratio of 2:1 in an aqueous media. The reference further

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teaches at column 10, lines 25-38 the monocarboxylic acids as claimed in applicants' dependent claim 49.

The amount of carboxylic acid ester in the composition as argued by applicant is clearly taught by the reference at column 9, lines wherein the amount of such agents, as further identified at column 10, lines 25-38, is from 0.05% to about 5.0%. This teaching obviates applicants' claim to the water-soluble acid ester being greater than 1.0%.

In view of the above Claims 24, 34-37, 49, 74 and 75 are properly rejected under 35 U.S.C. 103 (a) since the claims are drawn to a generic composition (claims 24, 34-37 and 49 and a method for the use of the composition claims 74 and 75.

The method claims 74 and 75 are obviated under 35 U.S.C. 103(a) since Young et al. teach at column 1, line 60 to column 2, line 38 that the shampoo compositions taught therein can be used to clean and style hair.

As to the composition claims 24, 34-37 and 49; the anionic surfactants are taught at column 2 line 33 to column 4, line 35. Amphoteric surfactants are taught at column 4, lines 36-52 and carboxylic acid ester, in accordance with applicants' election, is taught at column 10, lines 25-38.

The reference differs from the claims in that claim 24 limits in the ratio of anionic surfactant to amphoteric surfactant to less than or equal to 3:1. This limitation was not addressed in the prior office action. However, since applicants' claim is drawn to a ratio of **equal or less 3:1**, the teaching in the reference that the ratios in examples are less than 3:1, i.e., as discussed above in Example 1 of the reference that the ratio is taught therein to be 2:1 is within applicants' claimed limitation.

The claims differ from the reference in the composition being devoid of a cationic surfactant. However, this feature is deemed not to be a critical element since the examples set forth by the applicants fail to teach any surprising and unexpected result by eliminating a cationic surfactant

Examples 7 and 9 of applicants' specification do not contain a cationic surfactant yet produced the same results. The composition and method claims are obviated by the teachings in Young et al.

The test of obviousness is "whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention." In re Gorman, 933 F.2d 982, 18 USPQ 2d 1885, (Fed. Cir. 1991). In view of the above rejection it is deemed that the evidence presented has established a prima facie case of obviousness. is presented.

None of the claims are allowed

Applicant is advised that should claim 24 be found allowable, claims 35 and 36 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

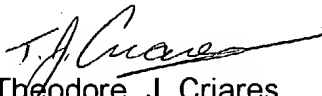
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Criares whose telephone number is (571) 272-0625. The examiner can normally be reached on 6:30 A.M. to 5:00P.M. Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Theodore J. Criares  
Primary Examiner  
Art Unit 1617

7/20/04

tjc